

1
2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 United States of America,

7 Plaintiff,

8 v.

9 Allen Ray Jordan,

10 Defendant.
11

No. 2:96-cr-475-GEB

**ORDER DENYING DEFENDANT'S MOTION
FOR SENTENCE REDUCTION UNDER 18
U.S.C. § 3582 AND AMENDMENT 782
TO THE UNITED STATES SENTENCING
GUIDELINES**

12 Defendant Allen Ray Jordan, a federal prisoner, moves
13 for reduction of his sentence under 18 U.S.C. § 3582(c)(2),
14 arguing that Amendment 782 to the United States Sentencing
15 Guidelines lowers his offense level and authorizes the court to
16 reduce his sentence from 360 months to 324 months. Def. Mot. to
17 Reduce Sentence ("Def. Mot."), ECF No. 414. The United States
18 filed an opposition to the motion. Gov't Opp'n, ECF No. 423.
19 Defendant filed a reply. Reply, ECF No. 424.

20 Defendant was initially sentenced to life in prison
21 following a jury verdict finding him guilty of the following
22 charges in the Superseding Indictment: Count One, conspiracy to
23 manufacture methamphetamine in violation of 21 U.S.C. §§ 846 and
24 841(a)(1); Count Two, attempt to manufacture methamphetamine in
25 violation of 21 U.S.C. §§ 846 and 841(a)(1); and Count Three,
26 maintaining a place for manufacture of methamphetamine in
27 violation of 21 U.S.C. § 856. Defendant appealed his sentence
28 and other issues, and the Ninth Circuit vacated his sentence,

1 inter alia, in United States v. Jordan, 291 F.3d 1091, 1094 (9th
2 Cir. 2002), stating inter alia, "[b]ecause of the Supreme Court's
3 shift of direction in Appendi[v. New Jersey, 530 U.S. 466
4 (2000)], and [Ninth Circuit] subsequent precedent, . . . Jordan
5 is entitled to [sentencing] relief."

6 Subsequently, the District Court sentenced Defendant to
7 360 months in prison, as follows: 240 months on Count One, a
8 consecutive 60 months on Count Two, and a consecutive 60 months
9 on Count Three. Defendant appealed that sentence and the Ninth
10 Circuit affirmed. Defendant appealed the affirmance to the
11 United States Supreme Court, which remanded for resentencing in
12 light of United States v. Booker, 543 U.S. 220 (2005). On
13 remand, the sentencing judge took "a fresh look at [the] 3553
14 [factors, since] Booker made the guidelines advisory" and
15 ultimately imposed the same 360-month prison sentence. Tr. Of
16 Sent'g to Def. Allen Ray Jordan held on 1/24/06 before Hon. Frank
17 C. Damrell, Jr. ("Sent'g Tr."), 15:17, :19-20 (No. Cr. S-96-475-
18 FCD), ECF No. 390. Defendant appealed that sentence. It was
19 affirmed. Defendant then filed a petition for writ of certiori
20 with the United States Supreme Court for review of the Ninth
21 Circuit's affirmance; the petition was denied.

22 Defendant contends in the sentencing reduction motion
23 sub judice that his 360-month prison sentence should be reduced
24 under § 3582(c)(2) since Amendment 782 to the Sentencing
25 Guidelines lowers his offense level and his advisory guideline
26 imprisonment sentencing range. Section 3582(c)(2) prescribes:

27 The court may not modify a term of
28 imprisonment once it has been imposed except
. . . in the case of a defendant who has been

1 sentenced to a term of imprisonment based on
2 a sentencing range that has subsequently been
lowered by the Sentencing Commission [and]
3 upon motion of the defendant

4 If a defendant qualifies for a sentencing reduction under
5 § 3582(c), the federal court may reduce a defendant's term of
imprisonment if the reduction is warranted by "the factors . . .
6 in section 3553(a) . . . [and it] is consistent with applicable
7 policy statements issued by the Sentencing Commission." 18
8 U.S.C. § 3582(c)(2). The United States Supreme Court explains in
9 Dillon v. United States, 560 U.S. 817, 826-827 (2010), when
10 determining whether a sentence reduction is appropriate:

11 A court must first determine that a reduction
12 is consistent with § 1B1.10 [of the United
States Sentencing Guidelines] before it may
13 consider whether the authorized reduction is
14 warranted, either in whole or in part,
according to the factors set forth in
15 § 3553(a).

16 At step one, § 3582(c)(2) requires
the court to follow the Commission's
17 instructions in § 1B1.10 to determine the
prisoner's eligibility for a sentence
18 modification and the extent of the reduction
authorized. Specifically, § 1B1.10(b)(1)
19 requires the court to begin by "determin[ing]
the amended guideline range that would have
20 been applicable to the defendant" had the
relevant amendment been in effect at the time
21 of the initial sentencing. "In making such
determination, the court shall substitute
22 only the amendments listed in subsection (c)
for the corresponding guideline provisions
23 that were applied when the defendant was
sentenced and shall leave all other guideline
24 application decisions unaffected." Ibid.

25

26 At step two of the inquiry, § 3582(c)(2)
instructs a court to consider any applicable
27 § 3553(a) factors and determine whether, in
its discretion, the reduction authorized by
reference to the policies relevant at step
28 one is warranted in whole or in part under

1 the particular circumstances of the case.
2 Because reference to § 3553(a) is appropriate
3 only at the second step of this circumscribed
4 inquiry, it cannot serve to transform the
5 proceedings under § 3582(c)(2) into plenary
6 resentencing proceedings.

7 Defendant contends he qualifies to have his sentence
8 reduced, as follows:

9 Under the 2011 version of the [Federal
10 Sentencing G]uidelines [M]anual, Mr. Jordan's
11 base offense level was 38 because he was
12 responsible for [1.5 KG or more of
13 Methamphetamine (actual)]. PSR at p. 7-9. Two
14 levels were added for possession of a
15 firearm, and two levels were added for his
16 testimony at trial constituting obstruction
17 of justice for a total offense level of 42
18 [and a sentencing range of 360 months to life
19 in prison]. PSR at p. 8-9.

20 Under the recent amendment and the 2016
21 [United States Sentencing Commission
22 G]uidelines [M]anual, the base offense level
23 associated with Mr. Jordan's convictions
24 drops by two, to 36. See U.S.S.G.
25 § 2D1.1(c)(2) (2016 ed.) Applying the
26 enhancements his total offense level is now
27 40 and the amended guideline range is 324-405
28 months.

Def. Mot. 4:3-12. The United States agrees with this contention,
stating, "[a]pplying the first step identified in Dillon, the
defendant is correct that Amendment 782 reduced the guideline
range applicable in his case [to a new guideline range of 324 to
405 months]." Gov't Opp'n 3:22-23. The record reveals that
Defendant "has been sentenced to a term of imprisonment based on
a sentencing range that has subsequently been lowered by the
Sentencing Commission" to a new advisory guideline range of 324
to 405 months; therefore, "the court may reduce [Defendant's]
term of imprisonment," if a reduction is warranted under "factors
. . . in section 3553(a)" 18 U.S.C. § 3582(c)(2).

1 The parties dispute whether Defendant should receive a
2 reduction under step two of the Dillon analysis. Defendant
3 argues:

4 A reduction to 324 months is warranted in Mr.
5 Jordan's case [because t]here are no factors
6 to suggest that Mr. Jordan should get a
7 sentence higher than the low end of the
8 guideline range. Mr. Jordan has been an
9 exemplary prisoner and has worked in UNICOR
10 consistently over the past 20 years. See
11 Attachment A. The requested reduced sentence
still results in a substantial sentence and
will mean his release date will be in
approximately 2019. In light of the reduced
guidelines, a sentence at the low-end of the
new sentencing guidelines range is certainly
sufficient, but not greater than necessary to
meet the goals of 18 U.S.C. §3553.

12 Def. Mot. 4:23, :28-5:6. The United States opposes reducing
13 Defendant's sentence, arguing:

14 In [applying step two of Dillon to
15 Defendant's] case, the nature of the offense
16 conduct, the nature and characteristics of
17 the defendant, the need to protect the public
18 from future crimes of the defendant, the
19 repeated instances of [the District Court's]
imposition of a sentence of 360 months in
prison even after Booker, and the need to
support unwarranted sentencing disparities
all support a sentence of 360 months.

20 The nature of the offense and need to
21 protect the public are demonstrated in the
22 defendant's arsenal of firearms, a homemade
23 hand grenade, and a clandestine fully-
24 functioning methamphetamine lab at the time
25 of his arrest. PSR ¶¶ 16-20. This defendant
26 was not a first time, non-violent offender;
27 instead, he was a sophisticated large-scale
28 criminal. Making matters worse, the district
court found that the defendant committed
perjury in his trial in an effort to mislead
the jury. PSR ¶ 20. Indeed, the defendant
already received a windfall based upon
caselaw developments because he initially
received a life sentence. A sentence of 360
months in prison is well within the . . .
defendant's revised guideline range and does
not represent an unreasonable sentence if

1 defendant's convictions occurred today.

2 Gov't Opp'n 4:15-5:4. Defendant replies as follows:

3 The government sets forth no new information
4 to suggest that Mr. Jordan is not entitled to
5 application of the reduced guidelines. Most
6 likely, with everything being equal, Mr.
7 Jordan today would again receive a low-end
8 guidelines sentence that equals 27 years in
9 prison for manufacturing methamphetamines.
10 There is no reason not to grant him the
11 reduction that the now-lowered sentencing
12 guidelines provide retroactively.

13 Indeed, the new information is that Mr.
14 Jordan, who is now 64 years old, has served
15 the last 20 years as a model prisoner,
16 completing the RDAP program, being placed in
17 the lowest security level camp, and working
18 for Unicor. See Attachment to Dkt 414. Mr.
19 Jordan has participated in all programs
20 available to him and has had no disciplinary
21 actions while in custody. The information
22 before the Court demonstrates that Mr. Jordan
23 has done exactly what was hoped, that he
24 would take the opportunity of prison time to
25 rehabilitate.

26 Reply 2:2-12.

27 At the sentencing hearing on remand, the sentencing
28 judge explained the reason Defendant received the sentence he
29 seeks to have reduced, discussed the seriousness of Defendant's
30 offenses, and expressed credibility concerns he had about
31 Defendant's allocution, as follows:

32 Unfortunately, in my view, the
33 allocution, your statement, is not as
34 forthcoming as I would like I have to
35 understand what's going on not only at the
36 prison, what's going on in your mind and
37 what's going on particularly with respect to
38 remorse and acknowledgement.

39

40 But more importantly, what concerns me
41 is the comment that you're not a violent
42 person. I mean, drugs have been a part of
43 your life, but so have weapons. And not just

1 any kind of weapons. You had a virtual little
2 Army in your house. Multiple weapons,
3 grenades, loaded weapons. I think 15 or 16
4 weapons, automatic weapons, hand grenades,
5 explosives. You had weapons at the site of
the lab [Y]ou said nothing about that
[in your allocution]. Nothing about the fact
that you had a stolen loaded Ruger Blackhawk,
.357 caliber revolver.

6 I think you also had, again, a semi-
7 automatic assault weapon with ammunition.
8 Then you [had a] young boy[, your nephew,]
9 come[] up with his girlfriend In
10 fact, he was involved. [W]hen they [went] to
11 your house, . . . you and your wife at the
12 time had four loaded handguns, loaded double-
13 barrel shotgun, 11 other unloaded handguns
14 and rifles and ammunition, five grenade
trailing devices with pin activators, a
homemade-fashioned hand grenade consisting of
a grenade trailer placed in a quantity of
black powder and surrounded by duct tape. And
I hear nothing about that. That's one area
that I feel your allocution falls way, way
short.

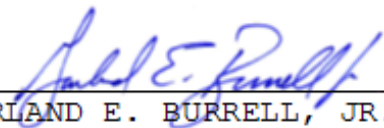
15 And to simply say you're not violent,
16 sir, is simply not truthful. You are clearly
17 a person . . . that has [a] type of
destructive capability and had weapons in the
past, I think that deserves an explanation
which I have not received.

18 Sent'g Tr. 32:14-15, 33:5-8, :21-34:22. The sentencing judge's
19 statements evince his concern about the grave danger Defendant's
20 criminal ventures posed to the community and Defendant's lack of
21 remorse and candor about the potential violence involved with his
22 criminal activities. Defendant appeared oblivious to the serious
23 risk of harm he posed to others by his possession of multiple
24 weapons and ammunition, including automatic weapons, five grenade
25 trailing devices with pin activators, and a homemade-fashioned
26 hand grenade consisting of a grenade trailer placed in a quantity
27 of black powder and surrounded by duct tape. However, Defendant
28 argues his motion should be granted because he has been a model

1 prisoner during his incarceration; specifically, he has completed
2 the drug abuse program, been placed in a lower security camp, and
3 has been working in prison. Defendant's post-sentencing
4 accomplishments are commendable, but they do not warrant reducing
5 his sentence in light of the following § 3553(a) sentencing
6 goals, which have paramount importance in determining the
7 sentence reduction motion: the nature and circumstances of the
8 offense, the need to protect the public from further crimes of
9 Defendant, the need to ensure that the sentence affords adequate
10 deterrence of Defendant and others from engaging in such criminal
11 activities, and the need to provide Defendant with just
12 punishment for the offenses.

13 Therefore, Defendant's motion for sentence reduction is
14 denied.

15 Dated: September 7, 2017

16
17 
18 _____
19 GARIAND E. BURRELL, JR.
20 Senior United States District Judge
21
22
23
24
25
26
27
28